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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition Of The Pennsylvania) CC Docket No. 96-98
Public Utility Commission for)
Expedited Waiver Of The 10-Digit)
Dialing Requirement For 412)
Area Code Relief)

MAR - 7 1997

To: Chief, Common Carrier Bureau

COMMENTS OF
AERIAL COMMUNICATIONS, INC.

Aerial Communications, Inc.¹ and its subsidiary APT Pittsburgh Limited Partnership ("APT Pittsburgh") responds to the Common Carrier Bureau Public Notice released February 25, 1997, in the above-captioned proceeding. APT Pittsburgh holds a license for broadband Personal Communications Services in the Pittsburgh MTA.

1. Aerial Communications, Inc. ("Aerial Communications"), a majority-owned subsidiary of Telephone and Data Systems, Inc., holds licenses for six broadband Personal Communications Services MTA markets including Minneapolis-St. Paul, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City and Columbus and is in the process of implementing competitive wireless services in these markets.

INTRODUCTION

On February 18, 1997, the Pennsylvania Public Utility Commission (“PaPUC”) filed a Petition for Expedited Waiver (“Petition”) of Section 52.19 of the Federal Communications Commission’s (“FCC” or “Commission”) rules. Section 52.19(c)(3)(ii) of the rules states that no area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the proposed overlay area code. The Commission promulgated section 52.19 of the rules, in part, to prevent unreasonable discriminatory and anticompetitive practices by incumbent common carriers against new entrants pursuant to Sections 201(b) and 202(a) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Telecom Act).

In June of 1996, the PaPUC adopted the 412 Area Code Order (“Order”), that imposed an overlay in the Pittsburgh area and requires seven-digit dialing where technically feasible. Aerial Communications and APT Pittsburgh oppose permissible seven-digit dialing in the Pittsburgh overlay area because it serves as a competitive disadvantage to new wireless service providers such as Aerial Communications and APT Pittsburgh whose business will depend heavily on the

newly assigned area code that requires ten-digit dialing.² Accordingly, Aerial Communications and APT Pittsburgh request that the Commission deny the petition for expedited waiver filed by the PaPUC.

The PaPUC Order authorizes the implementation of an overlay as an area code relief mechanism requiring that all new wireless service providers (such as PCS operators), competitive local exchange carriers (“CLECs”), incumbent local exchange carriers (“ILECs”) and incumbent cellular operators in need of more telephone numbers be assigned a new area code that services the same geographic area as an existing area code. Customers within the overlay area must dial at least ten digits (NPA-NXX -XXXX) in order to make calls to customers who are assigned the new area code and only seven digits (NXX-XXXX) to make calls to customers who have the existing area code. Thus, an overlay without a ten-digit dialing requirement for all calls within the geographic area covered by the area code overlay creates local dialing disparity particularly favoring customers of the ILECs and incumbent cellular operators. Customers of new wireless service providers particularly bear the burden of this dialing disparity.

Dialing disparity that is created because of state action, such as the PaPUC Order, and that is more detrimental to new wireless service providers than it is to landline and wireless incumbents violates Sections 332(a)(3) and 253(a) of the

² Eleven-digit dialing may be required if “1” plus area code dialing is necessary.

1996 Telecom Act. For this additional reason, the Commission should deny the PaPUC petition for expedited waiver of the ten-digit dialing requirement.

The Commission accurately identified the anticompetitive effects of local dialing disparity in the Second Report and Order and Memorandum of Opinion and Order, In The Matter of Implementation of Local Competition Provisions of the Telecommunication Act of 1996, FCC 96-333, released August 8, 1996 (“Second Report and Order”). In particular, the Commission stated that “customers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits much more often than the incumbent's customers, and would require people calling the competing exchange service provider's customer to dial 10-digits when they would only have to dial 7-digits for most of their other calls.”³

DISCUSSION

In support of its Petition, the PaPUC argues that the availability of interim number portability throughout the 412 area code and permanent number portability by mid-1998 in the Pittsburgh MSA addresses concerns that without a ten-digit dialing requirement there would be an anticompetitive effect on CLECs and new

³ Id. at paragraph 287.

wireless service providers serving the affected area. We disagree. Number portability will not mitigate the anticompetitive effects of seven-digit versus ten-digit dialing on new entrants during the next two to three years, a critically important period for competitive entry . The marketing advantages conferred on incumbents assigned blocks of numbers without the ten-digit dialing requirement permit them to differentiate themselves to the disadvantage of new entrants. Number portability cannot address the full scope of these marketing and technical advantages even when it is fully implemented years from now.

Pursuant to the Commission's rules adopted in the First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability, 11 FCC Rcd. 8352 (1996), local exchange carriers in the Pittsburgh MSA must offer long-term service provider portability commencing April of 1998.

⁴Wireless service providers are not required to port their numbers to competing wireless service providers, CLECs or ILECs until June of 1999.

New wireless service providers will attract, among others, customers of incumbent cellular operators. Because of the implementation schedule for wireless number portability, current wireless customers will not be able to take their

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We understand that the Commission recently approved delays in the deployment deadlines in Phases 1 and 2 of number portability. It is not unreasonable to assume that similar delays will be proposed for Phase 3 markets, including the Pittsburgh MSA

existing wireless telephone numbers to a new wireless service provider at least until June of 1999. The inability to port wireless telephone numbers requiring seven-digit dialing has the most severe competitive impact on new wireless service providers that will receive the new area code requiring ten-digit dialing. As the Commission recognized in the Second Report and Order, current wireless customers of incumbent cellular operators may be less willing to switch to a new wireless service provider that has telephone numbers in the ten-digit dialing area code, especially since they will not be able to retain their current telephone numbers with seven-digit dialing. Thus, number portability does not provide competitive parity and fails to avoid the anticompetitive effect of area code overlays on new wireless service providers.

In addition, number portability as a solution to the anticompetitive effect of area code overlays depends heavily on customer awareness of the feature. Educational programs for customers is essential to create awareness of number portability. Public awareness of number portability is not pervasive. The ILECs and incumbent cellular operators have little incentive to educate their customers on the availability of number portability since doing so will make it easier for their customers to switch to a competitor. The onus of educating customers on number portability will lie principally with CLECs and new wireless service providers that are currently wrestling with other telecommunications issues such as

interconnection and tower siting.

The PaPUC should not rely on number portability as an effective solution to the anticompetitive effects of area code overlays without a ten-digit dialing requirement until customer awareness about number portability becomes widespread.

The PaPUC also argues that a waiver of Section 52.19 is warranted because information provided to it by the Bell Atlantic code administrator indicates that competitors will be assigned sufficient 412 NXX codes by June 30, 1997, the estimated time NXX codes will become exhausted. The PaPUC fails to acknowledge that several new entrants may not have fully deployed their networks by June 30, 1997, and may not be in a position to request 412 NXX codes by that time. Unlike ILECs and incumbent cellular operators, new wireless service providers will request more number assignments after June 30, 1997, than they requested prior to that date. The PaPUC admits that by the time NXX codes exhaust in 412, CLECs and other non-traditional competitors will control only one-third of the usable NXXs in the 412 area code.⁵

To compound the matter, ILECs and incumbent cellular operators also have an advantage over new entrants when a new area code overlay is introduced because they can warehouse NXXs in the 412 area code. Incumbent LECs and

⁵ See Petition, pg. 7.

cellular operators also are able to reuse telephone numbers within the 412 NXX that are returned to them as their customers move or change carriers. Telephone numbers historically exhaust more quickly than predicted due to inefficient allocation of numbers within an area code block.⁶ Given that ILECs hold at least two-thirds of the 412 NXX codes and are able to warehouse and reuse numbers within the 412 NXX along with incumbent cellular operators, it is erroneous of the PaPUC to argue that numbering conditions in the 412 area code support the implementation of an overlay without mandatory ten-digit dialing.

Finally, the PaPUC contends that its Petition should be granted on an expedited basis because the cut-over date for overlay implementation in the 412 area code is May 1, 1997, and technical and central office changes must be made by all telecommunications services providers by that date. The Commission should not take expedited action on the Petition because of the magnitude of the changes associated with 412 overlay implementation. Furthermore, the arguments put forth by PaPUC in support of a waiver of section 52.19 of the Commission's rules do not outweigh the discriminatory and anticompetitive effects that the overlay will have on competing service providers, especially new entrants.


⁶ For example, last year the Chicago area was assigned three new area codes that were expected to solve the number exhaust problem until the next century. Recent reports, however, indicate that one of the three new area codes will exhaust early next year while another will exhaust in 1999. See, *847 Plus 630 Is Less Than Enough Future Codes May Lack An Area*, Chicago Tribune, February 25, 1997.

CONCLUSION

Accordingly, Aerial Communications and its subsidiary, APT Pittsburgh, respectfully request that the Commission deny the PaPUC petition for expedited waiver of the ten-digit dialing requirement.

Respectfully submitted

AERIAL COMMUNICATIONS, INC.

By: Brian T. O'Connor 

Brian T. O'Connor
Director, External Affairs and
Latrice Kirkland
Manager, Industry Relations
8410 West Bryn Mawr
Suite 1100
Chicago, IL 60631
(773)399-7464

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